

Testimony Regarding HB 5271

An Act Concerning The Provision Of Outdoor Food And Beverage Services And Outdoor Displays Of Goods

March 4, 2022

Dear Planning and Development Committee members,

My name is Jeff Holland, I am a resident of New Canaan, and am writing with some concerns about HB 5271. Although I am otherwise very supportive of the outdoor dining program, I have found that many of the restaurants and shops have obstructed sidewalks and parking in a way that makes them inaccessible and even dangerous to everyone, including people with disabilities. Long standing civil-rights law requires that these businesses, their parking, and their dining (inside or outside) be accessible under Title III of the Americans with Disabilities Act (ADA). Likewise, under Title II, sidewalks and curb ramps are considered both a “service” and a “program” of government entities, and therefore must be constructed and then, importantly, maintained to be accessible to everyone, including people that use wheelchairs and those that are visually impaired. The ADA Accessibility Guidelines, as well as state laws, have very specific technical requirements for accessibility.

The Civil Rights Division of the Department of Justice, which enforces the ADA, recently published guidance specific to “Streateries” - ***“Businesses must ensure there is an accessible route from the accessible parking to the outdoor eating or retail area by making sure outdoor fixtures (e.g., sandwich boards, heaters, planters, chairs, tables, umbrellas, etc.) are not blocking the path of travel. Additionally, businesses must ensure there is an accessible route through any outdoor eating or retail space, that any outdoor check out area is accessible, and that outdoor operations do not block accessible parking spaces.”*** (ADA.gov notices Feb. 7, 2022)

Importantly, as allowing sidewalk dining, especially on a public right-of-way, could be considered a Title II “program” being created through this legislation - ***“complying with the ADA could also mean making sure, during the permit process as well as on an everyday basis, that streateries or outdoor retail do not block curb ramps, sidewalks, or accessible street parking so that persons with disabilities may continue to use them.”***

I am citing this portion of the document to point out that there is some responsibility on the part of government entities to make sure that these streateries, parking and sidewalks, are accessible to those with disabilities, and also to suggest a change in language in the proposed bill. At line 101, concerning the “pathway,” I would like to ask the Committee to consider substituting the word “maintained” for “constructed.” Something that is “constructed” may not be safe or meet the access requirements of the ADAAG, and could also bring with it some liability to both the business and the municipality.

Approximately 12.6% of the US population has a disability. Everyone should be able to enjoy a dinner out with family and friends. Please include some additional language to ensure that everyone can.

Thank you for your consideration of my testimony,

Jeff Holland